NO. 85-1630

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

Supreme Court, U.S.
FILED
SEP 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

LOWELL D. HEWITT, Supt.;
B.B. KYLER, CO. III;
R.E. STOTELMYER, Major;
B.K. SMITH, Counselor III;
K.R. HILEMAN, Farm Manager;
D.R. ERHARD, Deputy Supt. for Treatment;
T.W. HENRY, Director of Treatment;
W. MATEER, C.I., Manager,
Petitioners

V.

AARON HELMS,
Respondent

JOINT APPENDIX

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Petition Filed April 3, 1986
Certiorari Granted June 16, 1986

JOINT APPENDIX

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CIVIL DOCKET ENTRIES NO. 79-950

DATE	NR	PROCEEDINGS
07/26/79	1	COMPLAINT
07/26/79	2	PETITION - of plaintiff to proceed in forma pauperis;
07/27/79	5	SUMMONS - issued and handed to U.S. Marshal for service with c.c. order and copy complaint and Doc. 3 attached.
12/7/79	23	AMENDED COMPLAINT - of Plaintiff, and C of S.
08/15/80	41	ORDER - of Court, IT IS HEREBY ORDERED THAT: (1) Plaintiff's motion for summary judgment is denied; (2) Defendants' cross-motion for summary judgment is granted; (3) Judgment is entered in favor of defendants.(R)
07/24/81		JUDGMENT OF COURT OF APPEALS - on consideration whereof, it is now here ordered and adjudged by this court that the judgment of the District Court, dated August 15, 1980, be, and the same is hereby reversed and the case is remanded for further

		proceedings not inconsistent with the opinion of this Court.
03/30/83	54	JUDGMENT - of Supreme Court of U.S. dated 2/22/83. Ordered and adjudged that judgment of U.S. Court of Appeals for Third Circuit is REVERSED and that cause is REMANDED TO Third Circuit for further proceedings in conformity with the opinion of this court.
07/25/83	59	ORDER ON REMAND - of the court of appeals remanding case from the Supreme Court of the U.S. -- issued in lieu of formal mandate. ORDERED that judgment of court of appeals filed 6/30/81 be VACATED only insofar as we directed a remand of the case to provide the defendants an opportunity to prove that they afforded Helms his constitutional rights before the December 8 (hearing committee). Judgment of the district court will be AFFIRMED insofar as it dismissed plaintiff's claims based on the denial of due process in the proceedings before the Hearing Committee on 12/8/78. In all other respects,

CIVIL DOCKET ENTRIES NO. 79-950
(continued)

DATE	NR.	PROCEEDINGS
		the judgment of this court (ct. of appeals) entered 6/30/81 will remain in full force and effect. The cause will be remanded for further proceedings consistent with our original opinion as modified. (Rosenn, J). Dated 6/29/83
02/03/84	68	ORDER of Court IT IS HEREBY ORDERED THAT: (1) plaintiff's motion for summary judgment is denied; (2) Defendants' motion for summary judgment is granted; (3) Clerk of the Court is directed to enter judgment for the defendants and close the file on this case.(R)
02/03/84	69	JUDGMENT - of Clerk IT IS ORDERED AND ADJUDGED that judgment be and hereby is entered in favor of the defendants and against the plaintiff.

CIVIL DOCKET ENTRIES NO. 79-950
(continued)

09/13/84	73	JUDGMENT/ORDER of Court of Appeals, IT IS ADJUDED AND ORDERED that the judgment of the District Court entered 2/3/84 be and the same is hereby affirmed.
12/07/84	74	PETITION - of plaintiff for Attorney's Fees, and AFFIDAVIT of Richard G. Fishman, Esquire and C. of S.
03/14/85	79	MEMORANDUM - of Court, and ORDER - that plaintiff's Petition for Attorney's Fees is denied. (R)
3/20/85	80	SUPPLEMENT - to Pltff's Petition for Attorney's Fees, w/Affidavit of John M. Humphrey, Esquire attached, and SUPPL/AFFID - of counsel concerning Attorney's Fees w/breakdown and C. OF S. H 3/22/85 w/c docket
4/8/85	81	NOTICE OF APPEAL - of plaintiff from Order of Court dated 3/14/85. Copies to counsel and U.S. Court of Appeals along with cert. copy of

CIVIL DOCKET ENTRIES NO. 79-950
(continued)

		Order of 3/14/85 and cert. copy of docket entries and T/L #1. Copy to Judge Rambo. TRANSCRIPT PURCHASE ORDER - mailed to Atty. Humphrey.
1/28/86	85	JUDGMENT - of Court of Appeals, it is now here ordered and adjudged by this Court that the judgment of the said District Court, entered 3/14/85, be, and the same is hereby reversed and the cause remanded to the said District Court with direction to con- duct a hearing on pltff's catalyst argument and for calculation of the fee award.
2/20/86	87	JUDGMENT - by Judge Mansmann, Cir. Judge submitted by the clerk granting the request for atty's fees in the amount of $3,719.
2/21/86	89	ORDER - All counsel having agreed to a postponement of any hrg in this matter IT IS HEREBY ORDERED THAT counsel shall submit a stat. rpt. to the Ct. w/in 60 days

CIVIL DOCKET ENTRIES NO. 79-950
(continued)

	of the date of this order. The status rpt shall specify 1) Whether counsel for the state intends to petition for certiorari; and 2) If not, whether the parties can reach a compromise on the amt of the atty's fees in question w/out the necessity of a hrg. (R) cc: Ct; all counsel.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AARON HELMS, Plaintiff	:	Civil Action No. 79-950
v.	:	
LOWELL D. HEWITT, Superintendent, B.B. KYLER, CO III, R.E. STOTELMYER, Major, B.K. SMITH, Counselor III, K.R. HILEMAN, Farm Manager, D.R. ERHARD, Deputy Superintendent for Treatment, T.W. HENRY, Director of Treatment, W.W.MATEER, C.I. Manager State Correctional Institution Drawer R, Huntingdon, Pennsylvania, Defendants	:	

AMENDED COMPLAINT

I. INTRODUCTION

1. This is a civil action for damages and declaratory and injunctive relief by an inmate against various prison officials for an unreasonable and illegal delay in affording him various due process procedural guarantees in disciplining him for alleged misconduct and then convicting him on the basis of an alleged informant whose credibility,

reliability, and factual knowledge of the incident in question was never confirmed and set forth in the record, nor was any written statement of the alleged informant presented.

II. JURISDICTION

2. The plaintiff invokes the jurisdiction of this Court pursuant to 28 U.S.C. §§ 1331 and 1343 to redress the deprivation by defendants under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges, and immunities secured directly by the Fourteenth Amendments to the United States Constitution and under Title 42 U.S.C. § 1983. Plaintiff's request for declaratory relief is authorized by 28 U.S.C. § 2201, 2202 and Rule 57 of the F.R.Civ.P.

III. PARTIES

3. Plaintiff is an adult individual who at all times relevant herein was incarcerated at the State Correctional Institution (hereinafter SCI) at Huntingdon, but is presently incarcerated at SCI Graterford.

4. Defendant Lowell D. Hewitt was at all times relevant herein employed as Superintendent of SCI Huntingdon by Pennsylvania Department of Justice, Bureau of Correction. In such capacity it is his function to govern and manage SCI Huntingdon on a day to day basis and assume responsibility of its internal affairs and operations as well as safekeeping, discipline and employment of inmates of said institution, including but not necessarily limited to the duties and functions set forth at 71 P.S. § 304, 306; 61 P.S. § 650 and 37

Pa. Code § 95.103(h)(7); 8 Pa.B. 2686. He is sued in his official and individual capacities.

5. Defendants Kyler, Stotelmyer, Smith, Hileman, Erhard, Henry and Mateer were at all times relevant herein employed as correctional officers or civilian employees at SCI Huntingdon by the Pennsylvania Department of Justice, Bureau of Correction. They were employed at the ranks or job titles set forth in the captioned to the Complaint. They are sued in their official and individual capacities.

IV. STATEMENT OF FACTS

6. On December 3, 1978 at approximately 7:50 p.m., a disturbance broke out at SCI Huntingdon which resulted in the injury of several correctional officers and inmates and said disturbance was quelled or order restored that same evening.

7. All inmates in the institution were confined to their cells the remainder of the evening on December 3, 1978. The general inmate population was released from confinement in their cells on December 4, 1978.

8. As a result of this incident of December 3, 1978, the Commonwealth of Pennsylvania and its agents, servants, and employees, including the State Police, Bureau of Correction and the Defendants and their agents, servants, and employees began an

investigation of various inmates, including the plaintiff in order to determine whether there was evidence of violation of the criminal laws of this state or misconduct regulations of the Bureau of Correction by the Plaintiff and other inmates allegedly involved in the disturbance.

9. On December 3, 1978, at approximately 10:00 p.m., plaintiff was placed in administrative close or maximum custody on B Block at SCI Huntingdon, pending investigation for alleged involvement in the disturbance of that evening.

10. On December 4, 1978 at approximately 3:35 p.m. plaintiff received an institutional misconduct for allegedly conspiring to riot and disrupt normal institutional routine by forcefully taking over the control room and

assaulting correctional officers which included Officer Rhodes, as a result of the institutional disturbance the day before.

11. On December 8, 1978, plaintiff was informed by an institutional hearing committee that his disciplinary case and confinement status was continued pending completion of the investigation by the state police pursuant to administrative directive .004 and because of insufficient evidence to support the misconduct charges against him.

12. On December 11, 1978 plaintiff was charged criminally in alleged violation of the laws of Pennsylvania, with assaulting correctional officer Rhodes and riot.

13. On or about Janaury 2, 1979, plaintiff was informed by an institutional program review committee which was composed of the defendants

Erhard, Henry and Mateer that his restricted confinement status was continued pending the completion of the state police investigation and pursuant to administrative directive .004. Said decision was concurred in by the defendant Hewitt.

14. On or about January 6, 1979 the criminal charges of assault and riot against plaintiff were dismissed and on or before this date the criminal investigation of plaintiff was completed by the Commonwealth of Pennsylvania and its agents, servants and employees.

15. On January 19, 1979, the plaintiff was charged by defendant Kyler with the institutional misconduct of assault on Sgt. Phillips arising out of the disturbance of December 3, 1978. Said charge was allegedly based on information supplied by a confidential informant.

16. On January 22, 1979 plaintiff was found guilty by an institutional hearing committee composed of the defendants Stotelmyer, Smith and Hileman on the misconduct charge of assaulting Sgt. Phillips based on information allegedly supplied to the defendant Kyler by an alleged informant. The misconduct charges of assault and conspiracy of December 4, 1978 were dismissed with no action having been taken on them or a violation found.

17. At the misconduct hearing of January 22, 1979, the credibility, reliability and factual knowledge of the incident by the alleged informant was never confirmed and set forth in the record, nor was any written statement of the alleged information presented.

18. The plaintiff was sentenced on January 22, 1979 to six (6) months in disciplinary close custody by the hearing committee effective from December 3, 1978 and recommended for transfer for separation from SCI Huntingdon which transfer has since taken place.

19. The action of the institutional hearing committee of January 22, 1979 was the first adjudication or finding of plaintiff's alleged misconduct arising out of the institutional disturbance of December 3, 1978, even though he had been confined in restrictive close or maximum custody since that date and the emergency created by the disturbance had ended on or before December 12, 1978.

20. The defendant Hewitt has on a monthly basis reviewed the decisions of the program review committee of the

institution and concurred in their decisions to keep plaintiff in restrictive close or maximum custody and recommend his transfer and he has otherwise refused to reverse plaintiff's disciplinary conviction of January 22, 1979.

21. The plaintiff has suffered immediate and irreparable harm from the misconduct convictions set forth in this complaint as to obtaining a minimum classification, pre-release and parole and has suffered immediate and irreparable harm from the debilitating conditions while confined in restrictive close or maximum custody including but not necessarily limited to a lack of participation in vocational, educational and rehabilitative programs or facilities, a lack of exercise and almost constant harrassment.

22. Defendants have at all times relevant herein, acted maliciously, wantonly, and with reckless disregard of the clearly established rights of the plaintiff.

V. CAUSES OF ACTION

23. The continuation of plaintiff in close or maximum custody for over ten (10) days without a prior finding of a misconduct or behavioral violation violated 37 Pa. Code § 95.104 (b)(3), 8 Pa.B. 2687 and thus denied plaintiff due process of law in the defendants failure to follow their own regulations as guaranteed directly by the Fourteenth Amendment to the United Statcs Constitution and under 42 U.S.C. § 1983.

24. The failure to hold a due process disciplinary hearing or convict plaintiff of misconduct charges arising

out of the disturbance of December 3, 1978 until January 22, 1979 denies plaintiff due process of law as guaranteed directly by the Fourteenth Amendment to the United States Constitution and under 42 U.S.C. § 1983.

25. The use of alleged informant's information to convict plaintiff or misconduct as set forth in this Complaint violates principles of fundamental fairness as guaranteed directly by the due process clauses of the Fourteenth Amendment to the United States Constitution and under 42 U.S.C. § 1983.

WHEREFORE, plaintiff prays this Honorable Court:

1. Enter a declaratory judgment, declaring plaintiff's rights under the Fourteenth Amendment and 42 U.S.C. § 1983 violated as more specifically set forth in this Complaint.

2. Enter a permanent injunction enjoining and restraining the defendants from confining plaintiff in restrictive custody of any kind as a direct or indirect result of the institutional disturbance at SCI Huntingdon on December 3, 1978 and ordering plaintiff returned to the custody status he enjoyed before December 3, 1978.

3. Order the reversal of the disciplinary conviction set forth in this Complaint and order it expunged from plaintiffs inmate, institutional and Bureau of Correction records.

4. Permit plaintiff to proceed in forma pauperis.

5. Award plaintiff's counsel costs and attorney's fees pursuant to 42 U.S.C. § 1988.

6. Enter judgment in plaintiff's favor and against defendants for monetary relief, including compensatory and punitive damages.

7. Enter such other relief, as may be necessary and proper.

/S/
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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AARON HELMS, Plaintiff	:	Civil Action No. 79-0950
v.	:	
LOWELL D. HEWITT, et al.,	:	
Defendants	:	

M E M O R A N D U M

Procedural History

Plaintiff filed his complaint on July 26, 1979. On August 12, 1979, defendants filed a motion to dismiss or in the alternative for summary judgment. On September 28, 1979, the magistrate recommended granting defendants' summary judgment. On November 7, 1979 this court declined to adopt the magistrate's recommendation. Instead, it agreed with plaintiff that material factual issues remained unresolved. On November 16,

1979, defendants filed an answer to the original complaint, asserting that they were entitled to a finding of qualified immunity. On May 12, 1980, plaintiff filed his motion for summary judgment, together with a brief which asserted that defendants were not entitled to a qualified immunity. That brief, however, did not address the applicability of qualified immunity to the informant issue. Defendants, on May 27, 1980, filed a cross-motion for summary judgment. In their supporting brief, defendants again asserted that they were entitled to qualified immunity. On August 15, 1980, this court granted summary judgment for the defendants on the ground that it found that no violation of any right secured by the constitution had occurred. Because its decision to grant the summary judgment was based on a finding of no constitutional

violation, this court found it unnecessary to address the qualified immunity argument.

On June 30, 1981, the Court of Appeals for the Third Circuit reversed the judgment of this court and remanded the case for further proceedings in accordance with its findings. Helms v. Hewitt, 655 F.2d 487, 503 (3d Cir. 1981). A petition for certiorari to the Supreme Court was filed on September 24, 1981 and was granted on March 8, 1982. Hewitt, et al v. Helms, 455 U.S. 999 (1982). The informant issue was not included in this petition. On February 22, 1983, the United States Supreme Court reversed the judgment of the Court of Appeals for the Third Circuit on the "protected liberty interest" issue. Hewitt v. Helms, ___ U.S. ____, 103 S.Ct. 864 (1983). Upon remand to it,

the Court of Appeals for the Third Circuit concluded that its judgment on the informant issue was not affected by the Supreme Court's mandate. In short, the Third Circuit's findings and decision regarding the process due plaintiff Helms, when, on January 22, 1979, the Hearing Committee found him guilty of committing a Class I misconduct on the strength of Lt. Kyler's hearsay account of an unidentified informant's uncorroborated story, remains the law in this circuit.

In recognition of that fact, a brief summary of the Third Circuit's rationale and conclusions is in order. It is uncontested that, although he had a notarized statement of the informant in his possession, when Kyler appeared before the Committee, he neither presented to them, nor did they seek, any factual indicia of the reliability or

credibility of the informant. The Court of Appeals found that this lack of support and corroboration ran counter to the teachings of Wolff v. McDonnell, 418 U.S. 539 (1974). According to the Third Circuit, although Wolff stated that within the closely controlled and unique environment of prison society, confrontation and cross-examination of adverse witnesses are not required, it also clearly pointed out that a balance, "a mutual accommodation between institutional needs and objectives and the provisions of the constitution that are of general application" must be achieved. Wolff at 556. Wolff left the achievement of that balance, that accommodation, "to the sound discretion of the officials of state prisons." Id. at 569. The Third Circuit found that the Wolff court, while generally deferring

to the discretion of the prison officials, expected, at a minimum, that no prison hearing committee would make a decision affecting the due process rights of an inmate without first conducting "a genuine, even if single, fact finding hearing and not a charade." Helms v. Hewitt, 655 F.2d 487, 502 (3d Cir. 1981). The Third Circuit held that Helms' conviction on a misconduct charge, when the only evidence offered against him was a hearsay recital by the charging officer of an uncorroborated report from an unidentified informant, was exactly the kind of arbitrary determination prohibited by Wolff. This decision by the Third Circuit, arising from a convincing and reasonable interpretation, explication and clarification of Wolff, has set the stage for the motions presently before this court.

This court has been directed by the Third Circuit to grant and enter summary judgment for plaintiff Helms unless it finds that the defendants acted reasonably in light of existing law and are therefore protected by a qualified immunity. Harlow v. Fitzgerald, 457 U.S. 800 (1982); Procunier v. Navarette, 434 U.S. 555 (1978). It is this issue and only this issue which needs to be discussed and decided here.[1]

---

[1] Only if the court should find that the qualified immunity cannot be utilized under the acts of this case, will it be required to consider the arguments concerning which of the defendants have been sufficiently implicated as having caused the deprivation of due process and what, if any, damages are due.

Discussion

The standard for evaluating a claim of qualified immunity is not in dispute among the parties here. Qualified or "good faith" immunity is an affirmative defense which must be pleaded by the defendant official. Gomez v. Toledo, 446 U.S. 635 (1980). (Defendants met this requirement by their answer of November 16, 1979 (Document #20) and in their brief in support of their cross motion for summary judgment filed on May 27, 1980 at pages 10-12 (Document #38).) The objective element of this immunity involves a presumptive knowledge of and respect for "basic unquestioned constitutional rights." Wood v. Strickland, 420 U.S. 308, 322 (1975). It is this presumption which the defendants must overcome. The subjective element of qualified immunity

(that of "malice") has never been an issue in this litigation. In fact, both parties seem to have demonstrated prescience regarding the Harlow decision of 1982. All the parties to this action agree with Harlow and Procunier that "government officials are shielded from liability for civil damages insofar as their conduct does not violate clearly established constitutional rights of which a reasonable person would have known." Harlow at 818 (emphasis added). What the parties cannot agree on is the state of the law regarding the pertinent issue on January 22, 1979. (January 22 is the date the hearing committee found Helms guilty of committing a Class I misconduct on the strength of Lt. Kyler's hearsay rendition of an unidentified informant's uncorroborated story.) It is also a generally accepted fact that "if the law at the time in

question was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law forbade conduct not previously identified as unlawful." Id.

In response to the Third Circuit's opinion in Helms v. Hewitt, 655 F.2d 487 (3d Cir. 1981), each of the parties filed briefs and other documents which set forth its version of the status and clarity of the pertinent legal principles on or before January 22, 1979. Plaintiff Helms tells the court that Wolff itself was clear on the pertinent legal issue. Helms further contends that the Third Circuit's reading of the Wolff rights and protections was nothing more than the kind of reading and interpretation which the

prison officials, with the aid of their supporting counsel, could have and should have done. The plaintiff also refers this court to two cases which predate the Third Circuit's extension and elucidation of Wolff but support its findings. He cites Bartholomew v. Reed, 477 F.Supp. 223 (D.Ore. 1979) and Finney v. Mabry, 455 F.Supp. 756 (E.D. Ark. 1978). For example, the Finney case states:

> [T]he evidence in this case shows that it is not rare for a disciplinary charge to be adjudicated solely on the basis of an investigating officer's statement of what some unnamed informant, identified as such, told him. While it would not be an unusual or unreasonable rule that a prisoner charged with disciplinary rule infraction not be advised of an informant's identity, here we

have prosecutions of prisoners on the basis of informant information where the committee itself has before it neither the identity of the informer nor any direct statement of the informer. The court is convinced from all the testimony that this situation invites, and has in fact permitted, correctional officers and inmates to obtain disciplinary sanctions against inmates on the basis of fabricated charges. Finney at 765.

. . .

The most difficult problem in this case is presented by virtue of the frequent (and officially sanctioned) reliance by the disciplinary committee on secondary "reports" of rule violations, with no primary evidence of guilt of any sort, in the form of witness statements, oral or written, or physical evidence, being brought before the committee.

> The committee cannot rationally determine guilt in such instances except by a blind acceptance of the "officer's statement," which is exactly what the typical case involves, according to the testimony of a past committee member and chairman. When the charging officer is not a witness to the infraction, such an "adjudication," in view of the realities of the prison environment, necessarily is so fraught with the risk of error that it can only be considered arbitrary. The effect is to simply delegate the decision-making to the investigating officer. Id. at 768-769.

. . .

> In Wolff, although this question did not arise, the court held that confrontation and cross-examination in disciplinary hearings were not constitutionally required, due to the hazards to institutional interests, "and that adequate bases for decision in prison disciplinary cases can be arrived at without

> cross-examination." 418 U.S. at 568, 94 S.Ct. at 2980. The "adequate bases" that the Supreme Court was relying on can only mean that normal process of consideration by the committee of evidence, which this Court holds must at least be in the form of witnesses' statements, written or oral, presented to the committee for its consideration. Id. at 769.

There are two problems with these cases insofar as they are used to prove the status and clarity of the law as it should reasonably have been known by the defendants on or before January 22, 1978. First, the Bartholomew case postdates the hearing committee's decision and actions of January 22, 1979. Second, although Finney was published in time to have been known, read and considered by the committee, the defendants cannot be

fairly required to stay abreast of district court case law all across the country. Raffone v. Robinson, 607 F.2d 1058, 1062 (2d Cir. 1979).

Plaintiff also puts much emphasis on Murphy v. Fenton, 464 F.Supp. 53 (M.D. Pa. 1979), a carefully drafted decision by Chief Judge Nealon of the Middle District of Pennsylvania. In that opinion, Chief Judge Nealon ruled that "there must be a sufficient basis on the record to support the finding by prison officials that the unidentified informant was reliable...." Murphy at 56. While it is unarguable that this case supports the theory that Wolff set at least one of the standards recognized and explicated by the Third Circuit in Helms v. Hewitt in 1981, it is also unarguable that this opinion was not

published and not generally and readily available before the Board acted on January 22, 1979. Defendants should not be charged with notice of unpublished opinions. Ward v. Johnson, 690 F.2d 1098, 1112 (4th Cir. 1982). While it may be argued that prison officials and their counsel should be obligated to stay abreast of decisions of this sort within their state even when unpublished, this argument loses its strength when one considers that Murphy dealt with the federal prison system and not that of the Commonwealth. Unless this court is to turn its back on the realities of publication dates and unless it is to require defendants here to have ferreted out cases from each and every district court no matter how remote, it cannot reasonably hold that Finney, Murphy and Bartholomew clarified and

clearly established the law regarding due process rights and the use of hearsay recitals of an uncorroborated report of an unidentified informant whose reliability had never been established.

In a further attempt to support his argument that the law was clear and established, plaintiff also cites to Gomes v. Travisono, 510 F.2d 537 (1st Cir. 1974) which was cited to in Helms, 655 F.2d at 502. The language of Gomes is clear:

> If any of the facts establishing a board determination are derived from an unidentified informant: (1) the record must contain some underlying factual information from which the Board can reasonably conclude that the information was credible or his information reliable;

> (2) the record must contain the informant's statement in language that is factual rather than conclusionary and must establish by its specificity that the informant spoke with personal knowledge of the matters contained in such statement. Gomes at 540.

Note, however, that this language is taken from section IV of the Morris rules. The Morris rules were promulgated under a consent decree issued in Morris v. Travisono, 310 F.Supp. 857, 871-874 (D. R.I. 1970) and were adopted as law by Rhode Island. The problem with accepting the Gomes language as an expression of clearly established rights of constitutional dimension is that the same circuit court, in a subsequent opinion, (McLaughlin v. Hall, 520 F.2d 382 (1st Cir. 1975)) read Wolff's ruling differently. McLaughlin emphasized that

the development of specific procedural requirements beyond those specifically enumerated in Wolff must be left to the sound discretion of corrections authorities (McLaughlin at 385) and distinguished the Morris rules as separate and distinct from any purported constitutional imperatives. Therefore, it seems safe to say that the Gomes pronouncement does not prove that the law pertinent to these motions was clearly established, and as a result, Gomes cannot be used to divest defendants of their qualified immunity. It is also worth noting that McLaughlin, decided after Gomes and Morris, is one of the cases cited by the Third Circuit in Helms as having interpreted Wolff less expansively than the Rosenn panel. Helms at 501.

In light of the distinguishable and discountable status of Murphy, Bartholomew, Finney and Gomes, it seems clear that if this court is going to find support for plaintiff's argument that the law was clearly established, it would have to find it in Wolff itself. It short, this court would have to find, as the Third Circuit did, that Wolff's language and rationale clearly intended and clearly pointed to this result. Judge Rosenn, writing for the Third Circuit panel in Helms v. Hewitt, 655 F.2d 487 (3d Cir. 1981), found that Wolff teaches [that in the closely controlled environment inside prison walls, disciplinary procedures must represent a "mutual accommodation between institutional needs and objectives and the provisions of the constitution that are of general

application." (citations omitted) In striking that balance, the Court concluded that confrontation and cross examination of adverse witnesses were not required, because it believed that "adequate bases for decision" could be established through the use of other procedures. (citations omitted) Development of these procedures, the Court held, should be left "to the sound discretion of the officials of state prisons." Id. at 569; Helms at 501. (citations omitted)] Judge Rosenn also expressed the panel's belief that "Wolff intended a genuine, even if single, fact finding hearing and not a charade." Helms at 502. Additionally, Judge Rosenn pointed to the fact that:

> Wolff abjures arbitrary determinations. It therefore commands "a written statement by the factfinder as to the evidence relied on and

> reasons" for the disciplinary action. If this statement is intended to withstand scrutiny and win respect for prison disciplinary procedures, it must disclose more than a mere "reliance on speculation and facts not in the record." (citations omitted) Id.

After a close review of the facts, the Third Circuit panel determined that the hearing committee's determination of guilt on the basis of such a record (no primary evidence, no corroboration of the informant's story and no indicia of the informant's reliability) was totally unacceptable and did not fulfill Wolff's perception of "mutual accommodation between institutional needs and objections" and the basic constitutional requirements of due process. Wolff at 556.

While this court readily accepts the logical explication and elucidation of Wolff set forth by the Third Circuit

in its opinion of June 1981, and while this court agrees that the Third Circuit has done no more than logically explicate the broad and general declarations of basic due process rights and protections identified in Wolff, we must not forget the standard that is to be applied in official immunity claims. (Harlow and Procunier both allow immunity from civil damages when the conduct of the officials does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.)

It is interesting to note that none of the language excerpted from Wolff and utilized by the Third Circuit specifically and directly expresses the rights, duties and obligations found

therein by the Third Circuit panel. In fact, the Third Circuit had to intuit, extrapolate and employ its finely honed talents of analysis to arrive at its admittedly clear and convincing position.

We must also recognize, as did the Third Circuit panel itself, that various other circuits and legal commentators have read (and continue to read) Wolff to require almost complete deference to the judgment of prison officials on the need, if any, for administrative inquiry into the credibility and reliability of an informant. (See Helms v. Hewitt, 655 F.2d at 501 for citations to the First, Sixth and Eighth Circuit opinions.) Certainly, this recognition of disparate and even contradictory interpretations of Wolff by judicial panels with decades of experience at writing, analyzing and interpreting

legal decisions is proof in and of itself of the unclear and unsettled state of the law on this issue.

It should also be noted that this Court has seen nothing in the record to indicate that the prison officials were being obstructionist or recalcitrant or that they were acting in an ostrichlike manner and obstinately refusing to accept and implement the "clearly expressed" mandates of Wolff. It is true that the defendants did not exercise the wisdom, foresight and interpretive skills of the Rosenn panel. It is also true, however, that on or before January 22, 1979, the law on the instant issue was not so clear and settled that these defendants should be deprived of the qualified immunity they now seek.

In sum, this court finds that while the Third Circuit's clearly written and convincingly reasoned opinion of June 1981 has certainly changed the complexion of due process considerations in the prison environment prospectively (at least in this circuit), the status of the law on or before January 22, 1979 was not so clear and well established that the defendants' actions must be held to fall outside the protections of their qualified immunity. In light of these findings, this court will deny plaintiff's motion for summary judgment and grant defendants' motion for summary judgment.

/s/

Sylvia H. Rambo
United States District Judge

Date: February 3, 1984

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AARON HELMS, Plaintiff	:	
	:	Civil Action
	:	No. 79-0950
v.	:	
LOWELL D. HEWITT, et al.,	:	
Defendants	:	

O R D E R

Pursuant to the reasons expressed in the accompanying memorandum, IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for summary judgment is denied;

2. Defendants' motion for summary judgment is granted;

3. The Clerk of the Court is directed to enter judgment for the defendants and close the file on this case.

/s/

Sylvia H. Rambo
United States District Judge

Date: February 3, 1984

IN THE UNITED STATES DISTRICT
COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

AARON HELMS,	:	Civil No. 79-950
Plaintiff	:	
	:	
v.	:	
LOWELL D. HEWITT,	:	
et al.	:	
Defendants	:	(JUDGE RAMBO)

PLAINTIFF'S PETITION
FOR ATTORNEYS FEES

Pursuant to 42 U.S.C. § 1988, the plaintiff hereby petitions this Court for attorneys fees, assigning the following reasons therefore:

1. Plaintiff is a prevailing party in this case and otherwise entitled to attorneys fees.

2. The Affidavit of plaintiff's counsel is attached to this Petition, as well as a Fee Schedule showing time and work performed.

WHEREFORE, plaintiff prays that he be awarded attorneys fees in this matter at the rate of $85.00 per hour and that a multiplier also be assessed.

/S/
Richard G. Fishman, Esq.
Keystone Legal Services
477 E. Beaver Avenue
Suite 230-Unico Bldg.
State College, PA 16801
(814) 238-4958

/S/
John M. Humphrey, Esq.
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161 West Third Street
P.O. Box 215
Williamsport, PA 17703
(717) 323-8711

IN THE UNITED STATES DISTRICT
COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

AARON HELMS,	:	Civil No. 79-950
Plaintiff	:	
	:	
v.	:	
LOWELL D. HEWITT,	:	
et al.	:	
Defendants	:	(JUDGE RAMBO)

AFFIDAVIT

I, Richard G. Fishman, Esquire, being duly sworn according to law, depose and state based on my own personal knowledge that the following is true and correct:

I was admitted to practice law in the State of Pennsylvania in October of 1972 and have been practicing law since that date. I am admitted to the bar of the Supreme Court of the United States, the United States Court of Appeals for the Third and Fourth Circuits and the United States District

Court for the Middle District of Pennsylvania. Due to the location of my present employment, I am on inactive status from the United States District Court for the District of Maryland and the United States District Court for the Eastern District of Pennsylvania.

I have been specializing in prison law since 1973 and was engaged in prison work full time during the period March of 1977 through September of 1982. While I am still engaged in prison work, I now have a general legal services practice involving a variety of legal problems. I am also a Co-Director of Keystone Legal Services, Inc., my present employer. Keystone operates by a Management Committee similar to a group of managing partners operating a private law firm. There is no Executive

Director of the program. In my position, I am responsible for administration and supervision of other attorneys in the State College office as well as the Keystone Legal Services office in Clearfield, Pennsylvania.

From March of 1977 until July of 1978, I was chief attorney of the prison project of the Legal Aid, Inc. of Baltimore, Maryland. In that capacity, I engaged in litigation and supervised two other attorneys, two paralegals, a law student and a secretary in representing prisoners in state and federal courts and before administrative and legislative bodies. From July of 1978 until September of 1982, I headed the prison of Keystone Legal Services, Inc. and during that period of time supervised two other attorneys and a practicum student from Penn State University

in the provision of legal services for inmates.

My litigation experience includes arguing prison cases before the Pennsylvania and United States Supreme Courts. I have orally argued six (6) times in the United States Court of Appeals for the Third Circuit and twice (2) in the United States Court of Appeals for the Fourth Circuit on prison matters. I have also orally argued in the lower appellate courts in Pennsylvania and Maryland.

I have published an article concerning prisoner's rights and the labor movement and an article of a nonlegal nature concerning prison conditions in general. Last year I wrote a guest editorial for the Centre Daily Times in State College, Pennsylvania concerning prison overcrowding. I wrote a Self-Help Manual for Defense of Miscon-

ducts in Pennsylvania State Correctional Institutions which has been distributed in the past to inmates in the various prisons around the state and I have edited self-help manuals for consensual and three year separation divorces in Pennsylvania which were also geared for inmates to do their own divorce. In 1982, 1983, 1984, I have been a guest lecturer in corrections at classes taught in criminal justice at the Pennsylvania State University. In 1981 I taught at a seminar for legal services' attorneys concerning their training in federal practice and procedure. In 1975 and 1976 I taught legal research to inmates at the Delaware County Prison in Thornton, Pennsylvania.

My legal education includes a J.D. in 1972 from the Temple University School of Law and an L.L.M. in Urban

Affairs in 1973 from the University of Missouri-Kansas City School of Law.

In terms of the risks involved in Keystone Legal Services engaging in this and other prison litigation, it must be understood that we are not mandated by our funding sources to represent inmates in prison conditions and practices litigation. However, as a matter of priority at the time this litigation was filed, we decided to do prison work because our program had two state correctional institutions in our service area, Huntingdon with a population of over 1,500 inmates and Rockview with a population of over 1,200 inmates, as of 1982 and we were receiving many complaints about conditions. Due to the nature of this type of litigation and the logistics in representing prisoners, time spent in prison cases and just answering letters and

interviewing prison clients substantially detracts from the resources of our program in being able to provide services to clients who walk in off the street. In addition, as of September 1980, Keystone Legal Services had its largest staff of fifteen (15) attorneys and three (3) paralegals, with a budget of $605,297.00. At present we are operating on a budget of $448,229.00 with a staff of only eight (8) attorneys and one (1) paralegal. These funding cuts have also necessitated our program going from three (3) attorneys working full time on prison matters to just one (1) attorney, the undersigned, doing prison work part-time.

/S/

Richard G. Fishman, Esq.

Sworn to and subscribed before me
this 22nd day of October, 1984.

Sandra K. Rogers /S/
Notary Public

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF JUSTICE
BUREAU OF CORRECTION

BC-ADM 801 Administrative Directive
(Rev. 10/78)

Subject:

Institutional Disciplinary and Restricted Housing Procedure

I. SCOPE AND PURPOSE

Institutional life shall be governed by standards of behavior designed to promote correctional objectives and to maintain the general welfare of the institutional community. The laws of this Commonwealth and the rules and regulations of the Bureau of Correction and of the institution are a part of the standards of behavior governing each institution.

Behavior which deviates from such standards shall be handled by staff in the manner prescribed by this directive. Such behavior shall be evaluated within the context of the total treatment plan of the individuals, the effect of such behavior upon others and its consequences for the good order of the entire institution.

The methods used by staff shall be for the purpose of bringing about voluntary compliance with the standards prescribed. Sanctions shall be imposed only when necessary and in the degree necessary to regulate the unacceptable behavior.

II. STANDARDS OF BEHAVIOR

A. Rules and regulations which define expectations and prohibitions and which apply throughout the Bureau shall be established in writing in the form of Administrative Directives issued jointly by the Attorney General and the Commissioner of Correction. Rules and regulations pertinent to each institution which comport with the Administrative Directives shall be established in writing by the respective Superintendents upon approval of the Commissioner of Correction. The above rules and regulations shall be as relevant to the norms of the general society as the special problems of group life in the institution shall permit. They shall be published by the distribution of individual copies to each staff member and to each inmate and posted on bulletin boards. They shall be fully explained in inmate orientation sessions, staff meetings and other training.

B. Behavior which constitutes any of the following misconducts shall be deemed a violation of rules and regulations in all correctional facilities. Such state misconduct, classified as Class I or Class 2 in accordance with the following list, shall subject the inmate to the procedures of this directive.

(a) Class 1 Misconducts

1. Murder - Manslaughter
2. Escape
3. Possession of or Introduction of Contraband or Implements of Escape
4. Carrying a Deadly Weapon
5. Arson
6. Robbery
7. Burglary
8. Theft
9. Tampering with, Destroying or Damaging Property
10. Sodomy
11. Indecent Exposure
12. Rioting or Inciting to Riot
13. Conspiracy to Escape, Riot or Disrupt Normal Institution Routine that Could Result in Bodily Injury to Personnel or Inmates
14. Bribery of an Employee
15. Threatening an Employee or Inmate with Bodily Harm or Injury

16. Assaults and Fighting
17. Adulteration of any Food or Drink
18. Refusing to Obey an Order
19. Possession of or Use of Dangerous or Controlled Substances
20. Refusing to Work
21. Violating a Condition of Pre-release Program
22. Breaking Restriction or Quarantine
23. Intoxication
24. Making Fermented Beverages or Possession of Materials to Manufacture Fermented Beverages
25. Lying to an Employee
26. Conducting a Gambling Operation
27. Unauthorized Use of Mail or Telephone
28. Conduct with a Visitor in Violation of Posted Regulations
29. Presence in an Unauthorized Area
30. Loaning any Property for Profit
31. Insolence or Disrespect toward a Staff Member
32. Possession of Stolen Property
33. Violations of Administrative Directives not Specifically Enumerated
34. Other Felonies and Misdemeanors not Specifically Enumerated
35. Repeated Violations of Class 2 Misconducts

(b) Class 2 Misconducts

1. Body Punching, Horseplay
2. Taking Unauthorized Food from Dining Room, Kitchen or Officer's Mess
3. Possession of Unauthorized Clothing
4. Tattooing and other Forms of Self-Mutilation
5. Failure to Report to Work or Unexcused Absence from Work
6. Loaning or Borrowing Property except Legal Material
7. Failure to Follow Safety and Sanitation Regulations Regarding his Person, Quarters and Equipment
8. Failure to Stand Count or Interference with Count
9. Smoking where Prohibited
10. Any Violation of Rule or Regulation Contained in the Inmate Handbook not Specifically Enumerated Above

C. Attempts to commit any of the foregoing misconducts where the intent to do the prescribed act is clear and the inmate has taken substantial steps toward its completion, may be charged under the applicable misconduct.

PROCEDURES

A. Behavior problems which may be resolved by immediate counseling, warning or verbal reprimand shall be dealt with accordingly by the staff person involved. More serious violations shall be the subject of a Misconduct Report.

B. The Misconduct Report, a four-sheet snap set, shall in each case be distributed as follows: one copy shall be given directly to the inmate, whenever possible, by the staff member who wrote the Misconduct Report after approval by the ranking Correctional Officer on duty that the Misconduct Report has been properly written. No action shall be taken on the Misconduct Report unless this is done. The inmate will receive the copy as soon as possible and if placed in pre-hearing confinement, no later than three hours after such confinement begins. One copy shall be retained by the staff person who wrote the misconduct. A third copy shall be forwarded to the Deputy Superintendent for Treatment Services. The original shall be forwarded to the Chairman of the Hearing Committee and, following disposition, will be retained in the JBC-15 (records jacket).

C. Misconducts shall be referred to the Hearing Committee which shall be composed of the Chairman, who shall be the permanent member (Major or Captain of the Guard), a Casework Supervisor and a School or Vocational Supervisor, both of whom may rotate periodically. In the absence or lack of any of the foregoing members, the Superintendent shall designate an appropriate substitute. The Hearing Committee shall not include any participants in the incident or incidents from which the charges arise.

D. The procedure for handling misconducts shall be as follows:

1. The inmate shall be informed in writing of the charge and given a specific date for a hearing which shall be held not less than 24 hours after receipt of this notice but within six days.

2. The inmate shall be permitted assistance in presenting his case from either any staff member or any inmate in general population status, provided that such staff member or inmate is willing to serve in such an advisory capacity.

3. The inmate shall be permitted to meet with the person he chooses an appropriate length of time before the hearing.

4. The inmate shall be permitted to call witnesses at the hearing. They shall be regulated by the Chairman of the Hearing Committee based on their relevance to the case. No inmate can be forced to be a witness against his will.

E. The Hearing Committee shall conduct the hearing as follows:

1. The charge and alleged facts in support of the charge shall be read and fully explained by the Chairman. The staff member writing the misconduct may be present if he wishes and may call witnesses to support his claim. However, in cases of factual conflict, when the Hearing Committee deems it necessary to resolve the dispute, they shall compel the staff member's presence and may continue the hearing until he can be present.

2. The inmate shall be permitted to admit or deny the charges and to give his version which shall be recorded on the misconduct form by a member of the Hearing Committee.

3. The inmate may present information available to him and to others, with help from whomever he has chosen to assist him.

4. The committee members may interrogate the person making the report, the inmate and others as necessary.

5. The inmate may question the staff member charging him if the staff member is present and other witnesses who testified against him. The extent of the questioning shall be controlled by the Chairman of the Hearing Committee as considerations of relevancy, security and other valid considerations dictate.

6. A written summary of the hearing will be prepared which will include the facts relied upon by the Hearing Committee to reach its decision and the reasons for the decision.

A copy of the written summary will be given to the inmate. The inmate may if he wishes submit a concise summary of the hearing which summary shall be made a permanent part of the file.

7. After the decision is reached by the Committee, the inmate charged shall be called before the Committee to hear the decision and to be advised of its rationale.

8. A committee decision shall be based upon a preponderance of the evidence. Before action other than dismissal of the charges is taken, the Committee must be satisfied that, more likely than not, the inmate has committed a misconduct.

9. The inmate shall be informed that the decision of the Hearing Committee will be formally reviewed by the Program Review Committee upon the inmate's request. The inmate shall indicate on the Misconduct Report that he has been advised of his right to request a formal review

and so attest by his signature; if the inmate refuses to sign two witnesses shall sign to attest that the inmate was advised that he has fifteen days to submit a written request for a formal review.

F. The Hearing Committee may take the following actions:

1. In cases where the violation is proved and constitutes a Class 2 Misconduct:

a. Reprimand or recommend counseling.

b. Suspend privileges for up to fifteen days.

c. Assess fair repayment for property willfully destroyed.

d. Change cell assignment; excluding placement in Administrative Custody or Disciplinary custody.

e. Submit a recommendation for transfer to another institution to the Program Review Committee.

2. In cases where the violation is proved and constitutes a Class 1 Misconduct:

   a. Reduce classification to Class 2 Misconduct and take any action permitted above.

   b. Take any action permitted for Class 2 Misconducts above

   c. Change cell assignment; including placement in Close or Maximum Disciplinary Custody. Such placement will be reviewed weekly by the Program Review Committee as provided for in this Directive and will have a specified maximum duration for each misconduct not to exceed six months.

   d. Suspend privileges for specified period of time.

   e. Reclassify custody or program status.

G. Program Review Committee

1. The Program Review Committee shall be composed of the Deputy Superintendent for Operations, the Deputy Superintendent for Treatment Services and the Classification and Treatment Supervisor. In the absence or lack of any of the foregoing members, the Superintendent shall designate an appropriate substitute.

2. The inmate shall be entitled to have any decision of the Hearing Committee reviewed by the Program Review Committee at his request.

3. The Program Review Committee shall review at one half of the sentence served or weekly, whichever is the lesser, in those cases of inmates detained in Administrative Custody or Disciplinary Custody and shall decide whether continued custody in those units is appropriate and necessary in each case. This decision will be based upon a review of the counselor's notes and recommendations, additional

entries made on the inmate's record regarding his attitude and actions since placement in the restricted housing or since the last weekly review as well as the misconduct which was the basis of the placement for those cases in Disciplinary Custody.

4. The Program Review Committee, as a Committee, shall interview in person at least once every thirty days, those inmates detained in Administrative Custody or Disciplinary Custody. The determination of whether continued confinement is warranted will be based upon a review of the counselor's notes and recommendations, psychological and psychiatric reports when available, recommendations by other staff and their written observations regarding his attitude and actions and his attitude and actions during the interview. If the inmate is in Disciplinary Custody, the gravity of the misconduct must also be considered. When the Program Review Committee determines that continued confinement is warranted,

the inmate shall be given a written statement of the decision and its rationale. In cases of inmates detained in this status for more than thirty days, it shall be reported to the Commissioner of Correction by the Superintendent with his comments as well as those of the Program Review Committee and the rationale for such status and particular programs prescribed shall be stated. All inmates continuously confined in Administrative and Disciplinary Custody for a period of one year shall be given thorough annual psychological and psychiatric examination during this confinement.

5. The Program Review Committee, in releasing an inmate from Disciplinary Custody, must determine whether the inmate is a threat to other inmates, to staff or to himself or poses a threat of escape and all available records on the inmate shall be reviewed and considered to make this decision. In cases where such a determination is made the Program Review Committee may assign the inmate to either

Close or Maximum Administrative Custody in cases where the inmate was released from Maximum Disciplinary Custody or to Close Administrative Custody where the inmate was released from Close Disciplinary Custody. This determination will be made in writing and a copy will be provided to the inmate.

H. Scheduling and procedure for conducting appeal hearings by the Program Review Committee:

1. Upon receiving a request from the inmate for review of Hearing Committee's decision, the Program Review Committee shall notify the inmate and the chairman of the Hearing Committee of the time and date set for the review. The inmate may be excluded at the discretion of the Program Review Committee.

2. The inmate, with assistance if desired, shall present his objections to the decision of the Hearing Committee. These may be submitted in written form.

3. The Chairman of the Hearing Committee shall present the reasons for the decision.

4. The Program Review Committee may question both the inmate and the Chairman of the Hearing Committee regarding the facts and the rationale for the decision.

5. The Program Review Committee shall take the matter under advisement and promptly render the decision, together with the rationale, to the inmate and the Chairman of the Hearing Committee.

6. The inmate shall be given a written statement of the decision and its rationale.

7. All decisions of the Program Review Committee shall be reviewed by the Superintendent for his sustaining the decision or amending or reversing the decision in favor of the inmate.

IV. BEHAVIOR CONTROL AND CONFINEMENT

A. General

1. As the result of a general institutional disturbance or an incident which could result in the loss of control, all inmates may be confined to their own cells upon approval of the officer in charge of the institution. This action may be taken pending the restoration of order and a determination that normal institutional operations can be safely resumed.

B. Individual

1. An inmate who has allegedly committed a Class I Misconduct may be placed in Close or Maximum Administrative Custody upon approval of the officer in charge of the institution not routinely but based upon his assessment of the situation and the need for control pending application of procedures under paragraph III.

2. Depending upon the situation and the need for control, an inmate who has allegedly committed a Class 2 Misconduct may be removed immediately from his job,

restricted in activities or confined to his own cell upon approval of the officer in charge of the institution not routinely but based upon his assessment of the situation and the need for control pending application of procedures under paragraph III. If an inmate has been confined to his cell pending a hearing he will continue to enjoy use of his personal property such as his own television, radio, etc. except when the alleged misconduct involves the misuse of the item of personal property.

3. An inmate may be temporarily confined to either of the above units in an investigative status upon approval of the officer in charge of the institution where it has been determined there is a threat of a serious disturbance or a serious threat to the individual or others. The inmate shall be notified in writing as soon as possible that he is under investigation and that he will receive a hearing if any disciplinary action is being considered after the investigation is completed. An investigation shall begin immediately to determine whether or not a behavior violation has

occurred. If no behavior violation has occurred, the inmate must be released as soon as the reason for the security concern has abated but in all cases within ten (10) days.

4. An inmate who requests self-confinement may be placed in Close or Maximum Administrative Custody upon approval of the officer in charge of the institution pending review by the Program Review Committee. The Program Review Committee shall document the request by the inmate as well as the reasons for the request and shall determine whether Close or Maximum Administrative Custody is warranted by a review of the reasons and whether continuing confinement is justified or whether a transfer should be recommended.

V. RESTRICTED HOUSING CATEGORIES

The Bureau of Correction for purposes of this Administrative Directive shall recognize the following restricted housing categories for inmates within state correctional institutions.

A. Administrative Custody - for inmates requiring closer supervision or protection than is provided in general population and for temporary assignment of inmates pending further classification. Maximum Custody involves housing in the most secure facilities available in the institution and includes the most intensive scrutiny of all matters pertaining to security and the most restrictive regulation on inmate mobility. Close Custody involves housing in more secure facilities than those used for general population and restricted mobility. The degree of security and restriction of mobility is less than the degree present in maximum custody. Maximum or Close Custody may be designated based on the intensity of Supervision and control required.

B. Disciplinary Custody - for inmates found by the Hearing Committee to have committed Class 1 Misconducts. Maximum Custody

involves housing in the most secure facilities available in the institution and includes the most intensive scrutiny of all matters pertaining to security and the most restrictive regulation of inmate mobility. Close Custody involves housing in more secure facilities than those used for general population and restricted mobility. The degree of security and restriction of mobility is less than the degree present in maximum custody. Maximum or Close Custody may be designated based on the intensity of the supervision and control required as well as the nature and the particulars of the offense committed.

VI. CARE AND TREATMENT

A. Administrative Custody housing shall be designated as Close and Maximum and will be specified groups of cells in a designated section or sections of the institution as the physical plant permits.

1. The purpose of placing an inmate in this unit shall be to maintain the safety of the institution by segregating an individual who poses a threat to other inmates, to staff or to himself, poses an escape risk or needs protection from other inmates. The decision to place an inmate in this custody must comply with III. G.4., IV. B.1., IV. B.3. or IV. B.4. Determination of whether Close or Maximum Administrative Custody is necessary will be made by the Program Review Committee.

2. The inmates therein shall have all the rights and privileges accorded to the general population except for freedom to move about the institution, freedom to engage in programs with the general population, the use of civilian clothing and the use of items specifically found by the Program Review Committee to be a security hazard. The use of personal radios and televisions

may be permitted with the express approval of the Program Review Committee. All other personal property which is permitted in general population will be permitted in Administrative Custody.

3. The inmate requesting the use of an item or to participate in a program permitted in general population not expressly excluded above shall initiate such a request through the request slip process to the Program Review Committee who shall respond within one week.

4. The Program Review Committee may permit a limited release program from Close Administrative Custody as a gradual process to return to general population status.

B. Disciplinary Custody housing shall be designated as Close and Maximum and will be specific groups of cells in a designated section or sections of the institution as the physical plant permits. The initial determination of whether Close or Maximum Disciplinary Custody is necessary will be determined by the Hearing Committee to be later reviewed on a weekly basis by the Program Review Committee as outlined in III.

1. The purpose of placing an inmate in this unit shall be to supervise and control serious disciplinary problems.

2. Inmates confined therein shall not be permitted freedom to move about the institution or to engage in programs with the general population. Inmates in this confinement will be permitted those items or use of those items necessary to maintain an adequate level of personal hygiene as well as a reasonable amount of personal legal materials and correspondence. Inmates in this unit will also be permitted to visit with their approved visitors consistent with institutional and Bureau regulations, to correspond consistent with Bureau Directives and will be issued those items not already possessed by the inmate necessary to maintain personal hygiene, to correspond and prepare personal legal documents; also three cigarettes or their equivalent per day if requested. Any privilege may be curtailed at the express decision of the Hearing Committee after a Hearing.

C. Inmates in categories A and B above shall receive interviews at least weekly by the institution's professional treatment

staff. The Program Review Committee shall release an inmate from Administrative Custody or Disciplinary Custody as soon as appropriate.

D. All misconducts committed while confined in these categories must be written up and disposed of by the Hearing Committee procedure.

E. A shift commander, chaplain and a medical doctor shall visit inmates in Maximum Administrative Custody and Maximum Disciplinary Custody each day and such visits shall be recorded in the logs.

F. Every thirty days the Superintendent shall personally review the case of each inmate separated from the general population for thirty days or more. He shall maintain a written report of his findings in each such case and together with a copy of the Program Review Committee's report shall submit them to the Commissioner monthly.

VII. SUSPENSION OF DIRECTIVE

In an extended emergency situation or extended disruption of normal institutional routine, any provision or section of this directive may be

suspended by the Superintendent for a specific period of time with the approval of the Commissioner of Correction.

The foregoing has been approved by the Department of Justice, Bureau of Correction, and shall be effective October 1, 1978. This supersedes all previous directives on this subject and shall apply to all state correctional institutions and regional correctional facilities.

Gerald Gornish
Attorney General

William B. Robinson
Commissioner

BC-ADM 801 Administrative Directive

COMMONWEALTH
OF PENNSYLVANIA

Subject

INMATE DISCIPLINARY PROCEDURES

Bureau of Correction

I. SCOPE AND PURPOSE:

Institutional life shall be governed by standards of behavior designed to promote correctional objectives and to maintain the general welfare of the institutional community. The laws of this Commonwealth, the rules and regulations of the Bureau of Correction and of the institution are part of the standards of behavior governing each institution.

Discipline for behavior which deviates from such standards shall be handled by staff in the manner prescribed by this directive. Such behavior shall be evaluated within the context of the correctional plan of the individuals, the effect of such behavior on others and its consequences for the good order of the entire institution.

II. DEFINITIONS

For the purpose of this directive, the following definitions shall apply:

A. Administrative Custody - A housing status which provides closer supervision, control and protection than is generally provided in general population status, for non-disciplinary reasons.

B. Disciplinary Custody - A housing status, to which inmates found guilty of Class I Misconducts may be committed.

C. Hearing Committee

1. A panel composed of three (3) members, consisting of:
   (a) A Major or Captain of the Guard
   (b) A Casework Supervisor
   (c) A School or Vocational Supervisor (In the case of the Vocational Supervisor he must be a non-uniformed Supervisor.)

The Superintendent of an institution which does not employ at least three persons for any of the three categories of members, may designate management level staff members from the same phase of institution operation to serve.

2. These members shall be selected from a pool of nine persons (except the State Correctional Institution at Graterford which shall have twelve) designated by the Superintendent.

3. No member of a Hearing Committee panel shall have a direct supervisory role over any other panel member. Hearing Committee members who are closely related shall not serve on the same panel.

4. No staff member who wrote or approved the misconduct charge(s) or conducted the investigation into the charge(s) shall serve on the Hearing Committee panel which hears that misconduct.

5. There shall be only one (1) uniformed person on any hearing panel.

6. Only top-level management persons shall be chosen to sit on a Hearing Committee panel.

D. Hearing Committee Coordinator

The Hearing Committee Coordinator shall be a Casework Supervisor. The duties of the Hearing Committee Coordinator shall include, but not be limited to:

1. Scheduling of hearings,
2. Determination of relevancy of witnesses and availability at the hearing,
3. Extent of direct or cross-examination of any witnesses,
4. The reading and explanation of the charges to the charged inmate,
5. Announcing the decision and rationale of the Hearing Committee,
6. All other functions previously reserved to the Chairman of the Hearing Committee.

E. Hearing Examiner - An employee of the Bureau of Correction Central Office who assumes all of the functions of the Hearing Committee as described in this directive and other related duties.

F. In Camera - A hearing is held in camera when the hearing committee or examiner hears testimony or reviews evidence or documentation without the presence of the charged inmate.

G. Misconduct - Any behavior prohibited by Bureau of Correction Institution regulations, rules or policy. The term is also used to identify individual items listed as prohibited activities in §III.

H. Misconduct Charge - Listed in Section III of this directive

I. Misconduct Report - BC-141, Part I.

J. Program Review Committee - An panel of three members consisting of: 1. The Deputy Superintendent for Operations, 2. The Deputy Superintendent for Treatment Services, and 3. A Classification and Treatment Manager. The Superintendent may designate appropriate substitutes.

K. Restricted Housing Unit - An area or group of cells used for the purposes of inmates assigned to administrative and disciplinary custody and for the temporary housing of inmates awaiting classification or available cell space.

III. PROHIBITED ACTIVITY

Behavior which constitutes any of the following is prohibited.

A. Class I Misonduct Charges

1. Any felony, misdemeanor or summary offense.
2. Escape

3. Possession of contraband including money, implements of escape, unprescribed drugs or drugs which are prescribed, but the inmate is not authorized to possess, drug paraphernalia, poisons, intoxicants, materials used for fermentation, property of another, weapons or other items which in the hands of an inmate present a threat to self, others or to the security of the institution. When an inmate is charged under this section with possession of an item of contraband which is a weapon or item which in his hands presents a threat to others or to the security of the institution, and the item also has a legitimate use in the area discovered, credible evidence that the item has been used only for the legitimate purpose shall be considered to mitigate the misconduct to a Class II.
4. Kidnapping, taking hostage or holding any person against his will.
5. Destroying, altering, tampering with, or damaging property.
6. Wearing a disguise or mask.
7. Engaging in sexual acts with others, or sodomy.
8. Indecent exposure
9. Engaging in, or encouraging any group activity without prior approval by Superintendent or designee.
10. Disruption or interference with the security or orderly running of the institution.

11. Failure to stand count, interference with court.
12. Bribery.
13. Threatening another inmate or other person with bodily harm, or with any offense against his person, family, or property.
14. Extortion, blackmail, protection, demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing.
15. Assault or fighting.
16. Adulteration of any food or drink.
17. Refusing to obey an oral or written order.
18. Refusing to work or encouraging others to refuse to work.
19. Unauthorized use of dangerous or controlled substances.
20. Violating a condition of a Pre-Release program.
21. Breaking restriction or quarantine.
22. Possession or consumption of intoxicating beverages.
23. Making fermented beverages.
24. Lying to an employee.
25. Gambling, conducting a gambling operation or possession of gambling paraphenalia.
26. Unauthorized use of mail or telephone.
27. Conduct in violation of posted regulations.
28. Presence of an unauthorized area.
29. Loaning any property for profit.
30. Using abusive or obscene language to an employee.
31. Violation of Administrative Directives not specifically eumerated above.

32. Possession or circulation of a petition.
33. Repeated Class 2 Misconducts.
34. Conspiracy to commit any Class I or Class II misconduct.
35. Failure to report presence of contraband.

B. Class II Misconduct Charges

1. Body Punching, Horseplay
2. Taking Unauthorized Food from Dining Room, Kitchen or Officer's Mess.
3. Tattooing or other Forms of Self-Mutilation.
4. Failure to Report to Work or Unexcused Absence from Work.
5. Loaning or Borrowing Property except Legal Material.
6. Failure to Follow Safety and Sanitation Regulations Regarding the Inmate's Person, Quarters or Equipment.
7. Smoking where Prohibited.
8. Possession of any item not authorized for retention or receipt by the Inmate not specifically enumerated as a Class I contraband (#3). Existence of Class I contraband-mitigating factors established as per #3.
9. Any violation of any Rule or Regulation contained in the Inmate Handbook or Institutional Supplemental not Specifically Enumerated Above.

C. An attempt to commit any of the foregoing misconducts is a misconduct of the same class as the completed offense would be.

IV. MISCONDUCT REPORTS

A. Misconduct Reports

1. Content of the Misconduct Report

The misconduct report is used to give notice to the inmate of the conduct violations, with which he has been charged and the facts upon which the charges are based. The misconduct report will be used as evidence against the inmate at the misconduct hearing.

2. Charging Staff Member

The misconduct report is used to give notice to an inmate of the misconducts with which he is charged. It shall be written by a staff member who has personal knowledge of the misconduct or by a staff member at the direction of a person who has personal knowledge of the misconduct.

3. Time of Writing of Misconduct Report

The misconduct report shall be written within a reasonable period of time after the events which constitute the misconduct.

4. Approval by Ranking Officer on Duty

Prior to service of the misconduct report on the inmate, the report shall be reviewed and approved by the Shift commander. If the Shift commander is a regular member of the hearing committee which will hear the misconduct charges, the report may be approvee by the second in command.

B. Service of Misconduct Report

1. The inmate shall be served with the misconduct report within a reasonable time after it is written.

2. If an inmate is placed in pre-hearing confinement, the misconduct report shall be delivered to the inmate within 3 hours after the time the pre-hearing confinement begins.

3. The misconduct report should, whenever possible, be delivered by someone other than the charging staff member.

4. The staff member who delivers the misconduct report shall record the date and time of delivery on the misconduct report.

C. Distribution of Additional Copies

A copy shall be retained by the staff person who wrote the misconduct. A copy shall be forwarded to the Deputy Superintendent for Treatment Services. The original shall be forwarded to the Coordinator of the Hearing Committee/Hearing Examiner.

D. Witness Request, Inmate Version and Waiver forms shall be delivered to the charged inmate with the Misconduct Report. The inmate shall fill out the Witness Request Form and return it to the block officer no later than 9:00 A.M. the next working day and waiver forms may be returned at any time prior to the misconduct hearing. The block officer shall forward the Witness Request Form to the Hearing Coordinator/Examiner. The inmate should bring the Inmate's Version Form to the hearing.

V. MISCONDUCT HEARING

A. Scheduling - The misconduct hearing shall be scheduled no less than 24 hours nor more than 6 calendar days after notice of charges is delivered. A minimum of forty-eight hours notice must be given prior to hearing on a misconduct charge which results in the revocation of pre-release status.

B. The misconduct hearing shall be conducted by a Misconduct Hearing Committee or Hearing Examiner as defined by Section II of this directive.

C. Inmate Assistance

1. The inmate shall be permitted assistance in presenting the case from any staff member or any inmate in general population status, provided that such staff member or inmate is willing to serve in such an advising capacity.

2. The inmate shall be permitted to meet with the person chosen an appropriate length of time before the hearing.

3. An inmate assistant may assist the inmate in the presentation of witnesses

or other evidence and shall have a reasonable opportunity to address the hearing committee/examiner.

D. Plea

The charges shall be read. The charged inmate shall admit or deny the charges. An inmate who refuses to plead shall be deemed to have admitted the charges. He may submit his version in writing or may orally present his version which shall be recorded on the Inmate's Version Form.

E. Witnesses

1. The Hearing Committee may require the presence of any staff member or witness.

2. Up to three relevant witnesses, who have been properly requested, shall be permitted unless the Hearing Committee Coordinator/Examiner determines that the witness is unavailable or that a countervailing security concern makes it unreasonable to produce the witness. The inmate may include in this number one staff member who witnessed the misconduct, or if no staff member witnessed the misconduct, the charging staff member.

(a) Relevance - The inmate must state on the Witness Request Form why he believes the witness is relevant.

(b) Availability.

If the inmate requests a staff member or inmate witness who is not available at the time of the hearing, the inmate may elect either to waive the six (6) day hearing requirement to permit the witness to be present or to have the witness execute a written statement under oath which will be presented in lieu of live testimony. If the inmate elects to have the witness present, the hearing will be rescheduled at the earliest practical time after the witness is available.

(c) Countervailing Security Concern

For the purpose of this section, a countervailing security concern is established when the institution presents evidence

to show that the requested witness has a demonstrated history of recent erratic, hostile and/or disruptive conduct on multiple occasions such that the presence of the witness would unduly disrupt the progress of the hearing. In the event that a requested witness who has no such history as herein described, exhibits a current state of mind such as would reasonably lead to erratic, hostile and/ or disruptive conduct at the hearing, it shall be the duty of the Hearing Committee Coordinator or Examiner to personally examine the requested witness before the hearing, to determine the suitability of presenting the witness in person at the hearing. If the Hearing Committee Coordinator/Examiner determines that it would be unsuitable to have the witness present, he may at his election either continue the hearing until the witness may

be safely produced, take a written statement from the witness, or hear the testimony of the witness out of the presence of the charged inmate. In the event that a witness exhibits erratic, hostile and/or disruptive behavior at the hearing, the witness may be removed.

3. The Hearing Committee/Examiner may at their discretion examine the charging staff member, the charged inmate or any other witness. Except in the case of testimony heard in camera as provided below, the inmate shall be permitted a reasonable opportunity to ask relevant questions of any witness who has testified against him unless the witness objects. The extent of the questioning shall be controlled by the Hearing Coordinator/Examiner.

4. Determinations of credibility shall be left to the judgment of the Hearing Committee or Examiner.

5. All testimony shall be under oath.

6. If the inmate elects to plead guilty or waive his right to a hearing, no witnesses will be required.

F. Confidential Source of Information

When the misconduct is based upon information supplied by an informant whose identity should remain confidential, the following procedure shall be employed:

1. The information given by the informant, but not the identity of the informant, shall be disclosed to the inmate during the hearing unless the institution has reason to believe that the disclosure of the information itself would disclose the identity of the informant. In the latter instance, the information shall be presented to the Hearing Committee or Examiner, in camera.

2. The reliability of the informant will be established to the Hearing Committee or Examiner by a preponderance of the evidence by showing:

   a. The informant had the ability and was in the position to observe,

b. The informant has knowledge of the subject matter of the violation, and

c. The informant has given reliable information previously or that other witnesses have corroborated some of the information supplied by the informant.

3. The inmate shall be permitted to be present during the presentation of the reliability evidence unless the institution reasonably believes that the disclosure of the information describing the reliability of the informant would present a threat to the institution's security, in which case the evidence shall be presented in camera to the Hearing Committee or Examiner.

VI. DISPOSITION OF CHARGES

A. Determination of Guilt.

1. As soon as possible after the hearing of all evidence, but within the 6 day limit, the Hearing Committee/Examiner shall determine whether the inmate is guilty of the

misconduct charges based upon a preponderance of the evidence, that it is more likely than not that the inmate committed the misconduct with which he is charged. Each vote of a Hearing Committee member shall have equal weight.

2. After the decision is reached by the Committee/ Examiner the inmate charged shall be called before the Committee/Examiner to hear the decision.

3. If the inmate is found not guilty, that fact shall be recorded in writing. The inmate shall be given a copy. No rationale for the decision is required. All record of the misconduct shall be removed from the inmate's institution file and retained in a separate institution file.

4. Two (2) of the three (3) Committee members must concur to convict an inmate of any misconduct. A record shall be made of how each member voted. This record shall be forwarded to the Program Review Committee if they

are to review the misconduct. It shall not be disclosed to the inmate. Only the vote count will be announced to the charged inmate.

5. If the inmate is found guilty, a written summary of the hearing will be prepared which will include the facts relied upon by the Hearing Committee/Examiner to reach the decision and the reasons for the decision. The summary shall also include findings of fact concerning the testimony of each witness presented. A copy of the written summary will be given to the inmate. The inmate may if he wishes submit a concise summary of the hearing which summary shall be made of a permanent part of the file. The inmate shall be informed of possible avenues of appeal. The inmate shall indicate on the Misconduct Report that he has been advised of his right to request a formal review and so attest by his signature; if the inmate refuses to sign, two witnesses shall sign to attest that the inmate was advised of the right

to request a formal review. The inmate shall be advised that he has fifteen days to submit a written request for a formal review.

B. Sanctions

1. No sanction shall be imposed for any misconduct charge, for which the inmate is found not guilty.

2. Inmates found guilty of Class I Misconduct charges may be subjected to any one or more of the following sanctions:

   a. Reduction of the classification of the misconduct to a Class 2 and any sanction permitted for Class 2 misconducts.
   b. Any sanction permitted for Class 2 misconducts without change in class of misconduct.
   c. Change of cell assignment: including placement in Disciplinary Custody in the RHU or restrictive confinement in a general population cell for a period of time not to exceed six

months for any one misconduct charge.

d. Change of program level.

3. Inmates found guilty of Class 2 misconducts may be subjected to any one or more of the following sanctions:

a. A reprimand.
b. Suspension of privileges for a specified period of time.
c. Payment of the fair value of property lost or destroyed or for expenses incurred as a result of the misconduct.
d. A change of cell assignment except placement in Administrative or Disciplinary Custody status.
e. Change, suspension or removal from job.

VII. APPEALS

A. Appeal to the PRC

1. For the purposes of the Consolidated Inmate Grievance Review Procedure, BC-ADM 804, both the decision

of the Hearing Committee/ Examiner and the appeal decision of the PRC shall be considered Initial Review Decisions

2. Any inmate who has been found guilty of a misconduct by the Hearing Committee or Examiner may appeal to the Program Review Committee. The three bases for an appeal by the inmate are:

   a. The procedures employed were contrary to law, this directive or to the ICU Consent Decree:

   b. The punishment is disproportionate to the offense; and

   c. The evidence was insufficient to support the decision.

   No appeals from a finding of not guilty are permitted.

3. All appeals shall be in writing. Only one appeal to the Program Review Committee shall be permitted in the case of each misconduct.

4. Any inmate may seek the assistance of a staff member or an inmate in the same population status in the preparation of an appeal. However, only the inmate who has been found guilty of a misconduct shall be permitted to seek review. The inmate grievant must sign the appeal.

5. The appeal shall include a brief statement of the facts relevant to the claim. The text must be legible and presented in a courteous manner. The inmate should identify any persons who may have information which could be helpful in resolving the grievance. He may also state any claims he wishes to make concerning violations of Bureau directives, regulations, the ICU Consent Decree or other law.

6. The PRC will address all issues raised by the inmate and may, at its discretion, consider any other matter relevant to the issues raised. The PRC is not required to address any issue not raised by the appellant.

It will issue a brief written statement to the inmate of the reasons for its decision.

7. The Program Review Committee shall have the power to:

   a. Reject any appeal which does not conform to Section 2 above;
   b. Uphold the Hearing Committee/Examiner's decision;
   c. Uphold the finding of guilt but modify the punishment;
   d. Vacate the decision and remand back to the Hearing Committee/Examiner for rehearing;
   e. Vacate the decision and the charge to permit recharge and rehearing; and
   f. Dismiss the charge and prohibit recharge.

The Program Review Committee may not impose a greater punishment than has been designated by the Hearing Committee or Examiner. The Program Review Committee shall render its decision within five (5) working days of receipt of an appeal.

B. Appeals to the Superintendent

1. The inmate may appeal the decision of the Program Review Committee to the Superintendent in accordance with the appeal procedures described for Program Review appeals above. This review shall, for the purposes of the Consolidated Inmates Grievance Review System, BC-ADM 804 be considered the Appeal from Initial Review Decision.

2. The Superintendent, upon receipt of the request for review may make any decision permitted to the Program Review Committee. The decision of the Superintendent shall be forwarded to the inmate within three (3) working days of receipt of the appeal. Any working day during this period when the Superintendent is absent from the institution for the entire day, shall not be counted against the allotted time for response.

3. The Superintendent will address all issues raised by the inmate and may, at his discretion, consider

any other matter relevant to the issues raised. He is not required to address any issue not raised by the appellant. He will issue a brief statement of the reasons for his decision.

C. Final Appeal

Final appeal shall be to the office of the Chief Counsel pursuant to the provisions of BC-ADM 804, Consolidated Inmate Grievance Review System.

VIII. WAIVER

A. An inmate may voluntarily waive the hearing described in Section V at anytime prior to the hearing's completion. He may also waive any time limitations relating to the hearing or the service of notice.

B. All waivers shall be in writing and shall be signed and dated by the inmate.

IX. INMATE'S REFUSAL TO ATTEND HEARING

When an inmate refuses to attend a hearing as described in Section V, the following procedures shall apply.

A. The inmate shall be informed that he has a right to a hearing, but that he may waive that right by signing a written waiver. He should also be informed that if he waives the right, the hearing committee will decide if he is guilty without his presence and if he is found guilty, discipline will be imposed. If the inmate agrees to sign the waiver, it should contain a statement that he has been advised as detailed above.

B. If the inmate refuses to go to the hearing or sign a written waiver, the hearing will be held in absentia. If at any time during the time he is subject to discipline for the misconduct (restriction of privileges or confinement in disciplinary confinement) the inmate reconsiders and wishes to have a hearing, one will be scheduled for him. The inmate may not appeal any decision made by the hearing committee/examiner during a proceeding which he has refused to attend.

C. If an inmate requests such a hearing, it shall be scheduled as soon as possible after the request is made.

D. If the inmate is found guilty, the hearing committee may not impose any greater discipline than was imposed at the first hearing. The inmate shall be given credit against the new discipline for any discipline to which he was subject prior to the second hearing.

X. INMATE UNABLE TO ATTEND

If, in the opinion of the Hearing Committee/Examiner, the inmate is physically or mentally unable to attend or participate in a hearing as described in Section V, he shall postpone the hearing until the inmate is able to attend and participate. The decision to postpone a hearing under this section shall be in writing and shall be made close to the time the hearing would have been held.

XI. PERIODIC REVIEW BY PROGRAM REVIEW COMMITTEE

A. The Program Review Committee, will interview, in person, at least once every thirty days, those inmates assigned to Disciplinary Custody. The determination of whether continued confinement is warranted will be based upon a review of the counselor's notes and recommendations, psychological and pyschiatric reports when available, recommendations by other staff and their written observations regarding his attitude and actions and his attitude and actions during the interview.

B. The Program Review Committee shall, after interview, submit to the Superintendent a status report detailing the reasons the Program Review Committee feels that continued Disciplinary Custody is necessary for the inmate. The Superintendent shall review the report and determine whether the reasons set forth are valid and reasonable.

C. The Superintendent shall report to the Commissioner of Correction inmates detained in Disciplinary Custody for more than 30 days. He shall include or review his own comments, and of those of the Program Review Committee.

D. All inmates continuously confined in Disciplinary Custody for a period of one year shall be given annual psychological or psychiatric examinations during this confinement.

XII. SUSPENSION DURING EMERGENCY

In an extended emergency situation or extended disruption of normal institution operation, any provision or section of the Directive may be suspended by the Superintendent for a specific period of time with the approval of the Commissioner or Correction.

XIII. RIGHTS UNDER THIS DIRECTIVE

This directive sets out policy and procedure. It does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. The directive should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the accomplishment of the purpose of the directives and policies of the Bureau of Correction.

XIV. EFFECTIVE DATE

The foregoing has been approved by the Bureau of Correction and shall be effective May 1, 1984. This supersedes all previous directives on this subject and shall apply to all state correctional institutions and regional correctional facilities.

GLEN R. JEFFES
Acting Commissioner